By consent, the order of the 1st October 1937 will be extended so as to appoint the British Malaya Trustee & Executor Company Limited receivers as from the date hereof of the properties referred to in clause 20 of the will.

Order Accordingly.

Solicitors for plaintiffs:—*Allen & Gledhill.*

Solicitors for first defendant:—*John G. Campbell & Co.*

Solicitors for second defendant:—*Mendes & Ahlip.*

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

December 3, 1937

MARY JOSEPH AROKIASAMY

by her next friend S. P. Arokiasamy

vs.

G. S. SUNDRAM.

[SINGAPORE SUIT NO. 181 OF 1937].

Contract—Marriage—Breach of promise of marriage—Hindoo man—Christian girl—Married man's promise to marry—Ignorance of promisee—Public Policy.

A promise of marriage made by a married man who, at the time of the promise, holds himself out as a widower, is not against public policy.

A promise of marriage made by a Hindoo man to a Christian girl is actionable at law, as the status of a Hindoo does not prevent his contracting a valid marriage with a Christian.

If a disability due to status in fact exists, and is known to the defendant, but not known to the plaintiff it will not save the defendant from the consequences of an action for breach of promise of marriage.

ACTION for damages for breach of promise of marriage and for seduction.

The Plaintiff by her Statement of Claim delivered the 28th June 1937, and subsequent particulars, alleged that she and the Defendant verbally agreed on or about the 27th April 1935 to marry one another, and that, relying on the said agreement, she allowed the Defendant in the months of May and June 1935 to seduce her, whereby she became pregnant of a child, of which she was delivered on the 18th March 1936: that the Defendant now refused to marry her. She claimed general damages $10,000.— and special damages $420-00 (comprising medical expenses connected with her confinement and subsequent attendance on the child, $45-00, and maintenance of the child for 15 months, March 1936 to June 1937 @ $25.- per month = $375.-).

The Defendant's Defence delivered the 16th August 1937 denied (paragraphs 1 and 2) the promise of marriage and seduction, and (para.3) the birth of a child to the Plaintiff, or the Defendant's paternity. He admitted (para.5) that he was not, and never had been, willing to marry the Plaintiff. Finally, he alleged (para.4) that he was, at all material times a Christian, and that the Defendant was at all material times a Hindoo, and that, at the time of the alleged promise, he was, to the knowledge of the Plaintiff, already married to one Navaneethan.

The facts disclosed by the evidence appear sufficiently from the judgment.

de Mello for the Plaintiff.

Mitter, for the Defendant.—The evidence shows that Defendant was until October 1935, to the knowledge of the Plaintiff and her family, already married to Navaneethan, and a married man cannot make a valid promise to marry another woman; *Wilson* v. *Carnley*, (1908) 1 K.B. 729, C.A. *Spiers* v. *Hunt*, (1908) 1 K. B. 720; *Fender* v. *Mildmay*, (1937) W.N.275. Besides, the Defendant is by religion a Hindoo, and the Plaintiff is a Christian, and marriage between a Hindoo and a Christian is not possible.

de Mello in reply.—Neither the existence of the woman, Navaneethan, nor her alleged death in October 1935 has been proved. No documentary or other reliable evidence on either point has been produced, nor disclosed in the Defendant's affidavit of documents. Both the marriage and the death have to be strictly proved. The Defendant may have been merely cohabiting with Navaneethan, without being ever married to her. In any case, neither the Plaintiff nor her parents ever saw her, and they have definitely stated in evidence that the Defendant from the beginning represented himself as a widower. The Defendant's two letters to the Plaintiff dated the 7th and 12th September 1935 bear out this. The cases cited are not in point. In the two former, decided in 1908, the Defendant was, to the knowledge of the Plaintiff at the time of the alleged promise of marriage, a married man. No such knowledge has been established here. The recent case of *Fender* v. *Mildmay* turned entirely on the effect of a decree *nisi* for dissolution of marriage.

Moreover, no proof has been adduced that the Defendant is a Hindoo, except the Defendant's own statement to that effect. As against this, there is the evidence of the Plaintiff and her parents that they supplied board for several months in 1934—5 to the Defendant and his infant daughter, whereas the Hindoo religion strictly prohibits its adherents from partaking of meals with, or meals prepared or touched by, non-Hindoos, on pain of defilement. Difference of religion, moreover, is not a legal impediment to marriage.

Cur. Adv. Vult.

TERRELL, AG. C.J.—The plaintiff, who is an infant, sues by her father as next friend for damages against the defendant for breach of promise of marriage, aggravated by seduction. The defendant denies the promise and the seduction. He also sets up the following grounds of defence in paragraph 4.

> "The defendant will further allege that the plaintiff was at all material times a Christian and that the defendant was at all material times a Hindoo and that at the time of the allged promise he was to the knowledge of the plaintiff already married to one Navaneethan."

This paragraph seems to allege two separate defences. First, that there is something in the status of a Hindoo which prevents him from contracting a marriage with a Christian. No satisfactory evidence in support of this proposition was, however, called before me and it is nowhere alleged that the plaintiff knew the defendant was a Hindoo, or was aware that the fact of his being a Hindoo provided any obstacle to marriage. It is, I think, quite clear that if a disability due to status in fact existed, and was known to the defendant, but not known to the plaintiff, that would not save the defendant from the consequences of a breach of promise to marry.

Secondly, as regards the alleged marriage to Navaneethan, no satisfactory evidence was called that the defendant was in fact married to Navaneethan though it may be taken as proved that she did at one time live with the defendant and that he had two children by her. The defendant says that she is now dead, but apart from the defendant's statement there is no evidence as to when she died, and his evidence is merely hearsay. Although it has been held to be contrary to public policy to enforce a promise to marry when the plaintiff knew that the defendant was married already, no such question arises when the plaintiff did not know that the defendant was married, *a fortiori* a defendant who is married cannot escape the consequences of a breach of promise when he has deceived the plaintiff into thinking that he was not married. As Wilde, C.J. said in *Weld* v. *Harris*, 7 C.B. at p. 1005 "It would be strange indeed to allow the defendant to rely upon his own wrong—to set up his fraudulent concealment of his marriage—in order to discharge himself from his promise."

The questions before the Court therefore are pure questions of fact:

(1) Whether there was a promise to marry
(2) If the defendant was married, whether the plaintiff knew he was married, and,
(3) If there has been a breach of such promise, whether the damages to which the plaintiff is entitled have been aggravated by seduction or other circumstances.

The plaintiff's story is that she and her parents first came to be acquainted with the defendant in or about the month of July 1934 through the defendant's daughter Rajan, then about 7 years old, coming in to their house to play with the plaintiff. The parties were all then living in Flower Road, Serangoon, the defendant living nearby, opposite the plaintiff. The plaintiff says the defendant arranged with her parents that the defendant and his daughter should have their meals with the plaintiff and her family, and that an arrangement was accordingly made, the defendant paying $40 a month. The defendant explained that the child had no mother, his wife having died in India. In October, 1934 the plaintiff's eldest sister got married and left her parents' house to live with her husband. The defendant suggested that he should live with the plaintiff's parents, occupying the room vacated by the sister. The plaintiff's mother, however, did not consider this a desirable arrangement, and refused the suggestion. The defendant, however, continued to have his meals with the plaintiff's family until the end of October, 1934 when he moved to No. 1207A Serangoon Road, some distance away. After that he used to visit the plaintiff in her house at frequent intervals, and in December, 1934 proposed marriage. The plaintiff's parents did not entertain this proposal, which was repeated at intervals, on the ground that the plaintiff was too young, and that they wanted her to have further education. Eventually, the defendant again asked for the plaintiff's hand in marriage on the 27th April 1935. On that day the plaintiff's elder sister had given birth to a child, and in their joy at this happy event the plaintiff's parents gave their consent to the younger daughter's betrothal to the defendant. The happy occasion was celebrated by a dinner at the parents' house on the 30th April, at which only members of the plaintiff's family, including a son and daughter-in-law and the defendant were present, and on which occasion the defendant gave to the plaintiff an engagement ring.

On the 2nd May 1936 the plaintiff commenced going to school at the Church of England Zenana Mission School in Sophia Road. The omnibus in which the plaintiff went to school passed the defendant's house in Serangoon Road, and on the 3rd May 1936 he waylaid her and pursuaded her to get off the bus, gave her the key of his house, and asked her to go there and wait for him, saying he would be back at 11 o'clock. The defendant was at this time employed as a typist at the R.A.F. workshops in Yeo Chu Kang Road. The defendant duly came back at 11 and seduced the plaintiff. About a week later, on the 9th

May, the defendant in the course of the morning went to the C.E.Z.M. School, and beckoned to her to come outside which she did. He then suggested that she should tell the mistress that she was unwell and get permission to go home. These details having been satisfactorily arranged, the defendant took a taxi and drove the plaintiff to a photographer's in North Bridge Road, where he had a photograph taken of the two of them together. They then drove to the defendant's house and spent the rest of the morning there.

On 6 or 7 other occasions during May and June the plaintiff kept away from school and spent the morning in the defendant's house. On these occasions the defendant had carnal intercourse with the plaintiff, and she became pregnant. The plaintiff had not told her parents of her intimacy with the defendant, but in the month of August her condition could no longer be concealed from her mother, and she described to her what had happened. The parents were naturally very angry with the defendant, but the defendant repeated that he would marry the plaintiff as soon as he had got some money which he was expecting from his relatives. The defendant continued to visit at the plaintiff's house, but usually chose a time when the plaintiff's father would be out. So matters continued, the parents pressing the defendant to marry the plaintiff and the defendant putting them off until the child was born on the 18th March 1936. The child's father was registered as Nathan and the name Sundra Nathan was given in the Register of Baptisms at Our Lady of Lourdes, Singapore where the child was baptized on the 2nd May 1936. The plaintiff and her mother say that this name was given at the request of the defendant himself as he said that his real name was Sundra Nathan.

As regards the photograph, the plaintiff had a copy and gave it to her mother. Some time in September, 1935 the defendant asked the plaintiff's mother for the photograph on the excuse that he wanted to have an enlargement made. This was never done and the original was never returned. The photographer's shop in North Bridge Road has long since ceased carrying on business and no duplicate can now be obtained.

The story of the plaintiff as regards the dates of her absences from school in May and June 1935 was supported by the evidence of her teacher Mrs. Wilkinson. In all essential details which could be within the knowledge of her father and mother they entirely supported her. The plaintiff told her story fairly and without exaggeration or animus. I had no hesitation in accepting her as a witness of truth. I was just as favourably impressed with the evidence of the father and mother. The father did not attempt to conceal the fact that he was at times very angry with his daughter at the disgrace brought upon the family, so much so that on one occasion in March 1937 the plaintiff actually made a report at a Police Station. Nothing happened as a result of this report and the report itself appeared to me to be entirely irrelevant to these proceedings and I refused to allow it to be put in evidence to contradict the evidence of the plaintiff on the subject.

Counsel made much of the fact that these proceedings were not brought until 14 months after the child was born. The plaintiff's father explained that he hoped the matter could be settled by the defendant marrying his daughter, and only at the last resort was he prepared to undergo the disgrace of bringing his daughter's misfortune before the public eye. In my opinion his explanation was perfectly reasonable and I accept it.

The defendant himself is some years older than the plaintiff. His story is a complete denial of all the essential facts sworn to by the plaintiff and her parents. He even denied that his daughter Rajan had ever slept in the plaintiff's house in Flower Road. He called Rajan who is 10 years old as a witness. The object of calling her was to give evidence that the plaintiff and her parents used to visit their house while her mother Navaneethan was living there. This piece of evidence could clearly have been taught her by her father and I attached little weight to it. But in cross-examination she admitted that she did sleep in the plaintiff's house on several occasions and that these occasions were after her mother had gone to India. Rajan's evidence in my opinion did not assist the defendant at all. The defendant called another witness Ranchandra to say that he had spent week-ends with the defendant at Flower Road in 1934 and had seen the plaintiff and her parents at the house while Navaneethan was there. This witness was extremely vague as to dates and could not say when Navaneethan left for India. Anyway his evidence was not put in cross-examination to either the plaintiff or her parents and I attach no importance to it in the face of the very clear evidence of the plaintiff, her father and mother that they had never seen Navaneethan and had been informed by the defendant that she was dead.

I formed a very unfavourable opinion of the defendant's veracity. It is impossible to give in detail all my reasons for coming to such an opinion and one or two instances will suffce. He was at pains to show that he was not on particularly intimate terms with the plaintiff and her family after the end of 1934 when he had Christmas dinner with them. He definitely swore that he never saw the plaintiff between this Christmas dinner and the following September. In September 1935 he admits that the plaintiff whote to him affectionate letters on several occasions and two of his letters in reply dated the

7th and 12th September 1935 have been preserved and were put in evidence. These letters are clearly love letters, and, as at that time the plaintiff was 3 months pregnant and as I feel no doubt that the defendant was fully aware of the fact, he could hardly have written as he did unless he knew he was the father of the coming child. Then again in the postscript to the letter of the 7th September he says "I regret very much the prior appointment will prevent me having the pleasure of enjoying your sister's birthday tomorrow.". This sentence is quite inconsistent with the defendant's statement that he had not been to the plaintiff's house since the previous Christmas. It shows, on the contrary, that he was still on friendly and visiting terms.

Then again the defendant insisted in cross-examination that in December 1935 the plaintiff's father was pressing him to marry the plaintiff. This is one of the few points on which the evidence of the defendant agreed with that of the plaintiff and her witnesses. I do not think that any father would have the impertinence to press a man to marry his daughter when she was expecting a child in 3 months unless it were common ground between them that the defendant was the father. The defendant never says that he refused to marry the plaintiff on the ground that he was not the father of the child.

For these and other reasons I feel quite unable to accept the evidence of the defendant where it contradicts that of plaintiff, her father and mother. I think that he was at one time genuinely fond of the plaintiff, as she was of him, that he took advantage of her youth and inexperience, that she relied on his promise to marry her and allowed herself to be seduced. If the defendant was married at the time he made the promise then I find that the plaintiff did not know he was married having been informed by the defendant himself that the wife was dead. I also find that the defendant told the plaintiff that he was a Christian.

The plaintiff is accordingly entitled to damages. She will be entitled to the special damages claimed and amounting to $420. She will also be entitled to general damages which having regard to the status of the parties and the unfortunate position in which the plaintiff now finds herself I fix at $2,500.

Judgment Accordingly.

Solicitor for the Plaintiff—*A. de Mello.*

Solicitor for the Defendant—*M. Mitter.*

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

December 9, 1937.

RE W. S. BEE AND COMPANY *EX PARTE* OFFICIAL ASSIGNEE.

[SINGAPORE BANKRUPTCIES Nos. 59 & 60 of 1937]

Bankruptcy Ordinance (Cap. 45), s. 43, sub-s. 1(a)—Priority of Debts—Clerk's salary—Proof in bankruptcy—Merger of debt in judgment.

A creditor of a bankrupt had sued the debtor prior to bankruptcy and obtained judgment for a sum which included a claim for salary. This would have been a preferential claim in bankruptcy under s. 43, sub-s. 1 (a) of the Bankruptcy Ordinance.

Held, that the fact that the creditor had sued his employer to judgment for the amount of his salary and for another sum did not prevent his proving in bankruptcy for the whole debt nor did it prevent him claiming a preferential payment of part of the whole debt.

MOTION.

E. B. Williams, the Official Assignee in support of the motion.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

HORNE, J.—This is an application by the Official Assignee for directions. The creditor a former employee of the bankrupt filed a proof for $103.75 being a debt due on a judgment obtained on 10th March 1937 in a suit filed on the 6th February 1937. On examination the Official Assignee finds that $75 of this sum is salary as clerk for services rendered within the four months next before 23rd February 1937 the date of the interim receiving order, i.e. 1st November to January 31st, one month's salary in lieu of notice $25, costs $3.75.

In view of my judgment in the *Tan Lian Boh* case the Official Assignee did not adjudicate on the proof but applied for directions. The Official Assignee states in his findings that if he is to apply s. 43, sub-s. 1 the creditor will be entitled to prove preferentially for the salary and will rank as an ordinary creditor for the balance of the judgment, but as the judgment referred to states " that the doctrine of merger of a cause of action on a judgment must be recognised and followed by the Official Assignee in adjudicating on a proof " it may be " that the creditor cannot prove preferentially at all and that he must rank as an ordinary creditor for the whole of his claim on his judgment....."

He cited *Re Forte. Ex parte Schofield*, (1897) 2 Q.B. 495 which was not before the Court in the *Tan Lian Boh* case. In my opinion the *Tan Lian Boh* judgment does not affect this matter. Nor is the effect of the judgment accurately set out by the Official Assignee in his find-